

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0393, In the Matter of Anne E. Carano and Jeffrey L. Carano, the court on April 26, 2006, issued the following order:

Assented-to request to clarify the record is granted. The respondent, Jeffrey L. Carano, appeals an order of the trial court requiring him to reimburse the petitioner, Anne E. Carano, for one-half of the amount of a loan for which she co-signed and for finding him in contempt and assessing attorney's fees and costs against him. We affirm.

The respondent first contends that the trial court erred in finding that he was responsible for half of the amount of a loan for which the petitioner co-signed with the parties' daughter. He argues that his liability is limited by a 1996 order addressing an earlier motion for modification and contempt filed by the petitioner. The 1996 order provided that the respondent "shall pay one-half the children's college education expenses, to include tuition, books, room, board, fees and travel, after application of any scholarships, grants and loans." The order concluded by restating that the respondent "shall pay to [petitioner] one-half the college expenses of both children not covered by scholarships, grants or loans."

The interpretation of a court order is similar to that of court rules, and is therefore a question of law that we review *de novo*. See *State v. Champagne*, 152 N.H. 423, 428 (2005). We defer to the trial court's findings of fact, however, unless unsupported by the evidence. *Presstek v. Greenhalgh*, 152 N.H. 695, 699 (2005).

The trial court found that the loan "was intended to pay the balance of [the daughter's] education costs that had traditionally been split between the parties." The court further found that it "was a low interest loan and a less costly way for Petitioner to finance payment of the amount." The trial court found that this loan was distinguishable from educational loans taken by the parties' daughter and that the petitioner rather than the daughter had been making the payments on it. These findings are supported by the record. Accordingly, we conclude that the trial court did not err in finding that the loan was not the daughter's and in assessing the respondent for one-half of the college expenses that were covered by the loan.

The respondent also contends that the trial court erred in finding him in contempt for failing to make good faith efforts to pay an acknowledged debt to the petitioner because the record contained uncontested evidence of his inability to pay the amount due. He also argues that the trial court erred in assessing attorney's fees and costs against him. We review a trial court's decision whether

to exercise its contempt power under an unsustainable exercise of discretion standard. In the Matter of Giacomini & Giacomini, 150 N.H. 498, 500 (2004). The trial court found that the respondent had filed an untimely response to the petition and had failed to make any efforts to pay the amount due. That the respondent presented an uncontroverted financial affidavit did not require that the trial court be bound by it. See In re Brittany L., 144 N.H. 139, 143 (1999). The trial court had previously found that the respondent had the ability to pay the amount due. The evidence of respondent's income presented at the hearing that is the subject of this appeal predated the petitioner's motion for contempt and the respondent had not sought relief from the earlier order. The respondent's previous history of contempt in this case and his ability to repay past due amounts when faced with incarceration were all factors that the trial court could have properly considered in finding him in contempt. We find no error in this finding and the resulting assessment.

Affirmed.

BRODERICK, C.J., and DALIANIS and DUGGAN, JJ., concurred.

**Eileen Fox,
Clerk**